IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7354 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE R.R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MANUBHAI SOMNATH JOSHI

Versus

GUJARAT STATE ROAD TRANSPORT CORPORATION

Appearance:

Mr.P. Upadhyaya for MR MUKESH H RATHOD for Petitioner

MR KM PARIKH for Respondent No. 1

NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE R.R.TRIPATHI

Date of decision: 22/03/2000

ORAL JUDGEMENT :

Rule. Mr.K.M. Parikh, learned advocate waives service of the rule. With the consent of the parties, the matter is taken up for final disposal.

2. This petition is filed by the petitioner challenging the order passed on 21.8.1998, by the respondent Corporation, whereby the services of the petitioner were brought to an end on the ground that the petitioner has become permanently unfit for the post of Driver and his name stood removed from the establishment of Mehsana Division of the respondent corporation. the petitioner has prayed that the said order of termination dated 21.8.1998 be quashed and set aside and that he may be absorbed by the respondent corporation on the post of Peon with protection of pay as that of Driver with continuity of service with full back wages for the intervening period.

3. It is the case of the petitioner that the petitioner joined services of the respondent corporation as Driver on 18.4.1989. The petitioner while working as Driver was required to be operated on 8.8.1994, whereby his one lung was removed. Still the petitioner continued to work as Driver for almost three years until his health again deteriorated. The petitioner was required to be sent for medical examination in 1997. The case of the petitioner was referred to the Medical Board for examination. The petitioner was examined by the Board on 14.7.1998 and the Chairman of the Medical Board, Civil Hospital, Ahmedabad, certified that, "the petitioner is permanently unfit for the post of Driver". However, the petitioner was declared fit for the post of Peon. (Emphasis supplied)

4. It is the case of the petitioner that according to the policy of the respondent corporation, if any employee of the corporation is declared unfit for the post on which he is working and if he is fit for an alternative post or a lower post, then his case is required to be considered. On behalf of the petitioner reliance is placed on the judgment and order of this Court (Coram : K.R. Vyas, J.) in Special Civil Application No.8821 of 1997 dated 24.4.1998, in the matter between Chaudhary Haribhai Sendbhabhai v. Chairman and Managing Director, GSRTC & another. Mr. Upadhyay invited attention of this Court to para 3, of the said judgement, which reads as under:

> "This Court had an occasion to consider the said letter no.547 dt.26.1.1976, as well as the GSO No.503 which also deal with recategorisation in SCA No.6947 of 1994 decided on 28.4.98. That was also a case of a deriver who was declared unfit on medical certificate and consequently his services were terminated by the corporation by

> order of termination dt.24.11.95. In the said judgement after relying upon decision of the Supreme Court in the case of Narendrakumar Chandla v. State of Haryana and ors reported in AIR 1995 SC 519 held that when an employee is afflicted with unfortunate deceased due to which, he is unable to perform the duties to the posts he was holding, the employer must make every endeavour to adjust him in a post in which the employee would be suitable to discharge the duties and accordingly held that the respondents were not justified in rejecting the request of the petitioner to the post as a helper or peon. The petition was accordingly allowed. Since the fact of the present case is almost identical, same order is required to be passed in this petition."

Mr.Prabhakar Upadhyay, the learned advocate for the petitioner submitted that in view of the similarity in the facts of both the cases a similar order is required to be passed in this petition also. He also submitted that the aforeaid judgement is based on a decision of the Honourable the Supreme Court referred therein and hence it will be in the interest of justice to pass a similar order.

5. Mr.Parikh vehemently opposed to allowing of this petition and invited the attention of the Court to the contents of an affidavit in reply filed by him along with which he has produced a copy of one Circular bearing No.547 dated 20.1.1976 (this Circular is referred to as dated 26.1.1976 in the earlier judgement, which seems to be a mistake and the Circular seems to be dated 20.1.1976 which is produced at Annexure 'A' to the affidavit in reply, at page 52). This is the same Circular which was before this Court in the earlier Special Civil Application No.8821 of 1997 and this Court has considered the said Circular. This Circular, therefore, cannot help the respondent corporation.

6. In the result for the same reasons which are recorded in the aforesaid judgement and order, the authorities are directed to appoint the petitioner as Peon with effect from 21.8.1998. It is also directed that the petitioner be given continuity of service with effect from 21.8.1998, without back wages. However, the pay of the petitioner shall be protected. The respondent authorities are directed to pass appropriate orders on or before 15.5.2000. Rule is made absolute with no order as to costs.

22nd March 2000 (Ravi R. Tripathi, J.)

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